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Full Service Network

August 4, 2004

ORIGINAL

Ex Parte

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Section 251 Unbundling Obligations for Incumbent Local Exchange Carriers, CC Docket No. 01-338; Implementation of Local Competition Provision of the Telecommunications Act of 1996, CC Docket No. 96-98; Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147**

Dear Ms. Dortch,

On July 1, 2004, Verizon representatives met with Commissioner Abernathy regarding the above mentioned proceeding. The arguments presented by Verizon may persuade the Commission to promulgate unbundling rules that foreclose competitive investment in facilities and eliminate choice in the communications marketplace. Truly indicative of Verizon's successful monopoly doctrine, Verizon envisions competition between two monopolies: the ILEC and the cable company. As veterans of competition, we do not share this vision nor believe that it serves the interests of any business or consumer beyond the Verizon corporation and its employees.

In its ex parte filing of July 1, 2004, Verizon presented a number of assertions regarding the demand for high capacity UNE loops. Because these assertions are misleading and incomplete, each is addressed in the attached White Paper. Please place this comment on the record of the above proceedings.

Sincerely,

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White Paper: High Capacity UNE Loops

Verizon: "Demand for high capacity facilities is concentrated."

CLEC:

- High volume demand is typically generated by midsized to large businesses located in cities, not by residential users located in suburban or rural markets. It is therefore fitting that Verizon's data reflect geographic trends in population distribution, as sorted by customer type.
- Verizon installed networks located in less populous geographic regions during its monopoly era, enjoying the substantial investment protection afforded by captive ratepayers and state public utility laws.
- Today, Verizon's scarce out-of-region (i.e. non-Verizon territory) deployments of high capacity facilities are found in the same limited number of dense metropolitan areas that are served by other CLECs.
- Competition must begin where profitability can be established, and gradually expand outward where favorable market and regulatory conditions permit.

Verizon: "Competing providers are not dependent on ILEC facilities in any of these MSAs."

CLEC:

- Competitors are dependent upon the ILECs because only the incumbent carriers possess the network ubiquity required to serve an entire market. This ubiquity was attained by the incumbent carriers at ratepayer expense with minimal exposure to risk.
- UNE facilities provided by ILECs are absolutely essential to competition. Where UNEs are either unavailable or overpriced, residential and business consumers have little or no choice of service provider. In areas where ILECs have refused to make EELs available, for instance, business consumers enjoy drastically fewer competitive alternatives.
- Verizon classifies only high profit margin wholesale products as "ILEC facilities," and exercises the power of a monopoly to determine where competition may exist. For example, when CLECs order EELs (a facility priced at cost-based rates plus a reasonable profit for the ILEC), Verizon typically reports that there are no facilities available and refuses to provision the request. The same exact wireline facility, however, is remarkably available when ordered as Special Access (the same wholesale facility priced at rates an order of magnitude higher than EELs).

- While Verizon advocates that CLECs should deploy their own facilities, Verizon has purchased massive amounts of wholesale inter and intrastate transport provided by other companies (e.g. Wiltel and AT&T) in order to serve the long distance market. Since no anti-competitive barriers impeded Verizon's entry into the long distance market, Verizon has rapidly become the second largest long distance carrier in the country without investing in the facilities it advocates for the local wholesale markets.

- Competition, which is reliant upon UNEs, controls retail prices. Removing high capacity loops as a UNE would force most competitors to exit the marketplace, leaving only an ILEC and, in some areas, a cable company. Competition between duopolies or oligopolies was not a vision of the Telecom Act, and sanctioning this type of competition will harm customers through higher rates and a dearth of innovation and choice.

Verizon: "Competing providers that do use ILEC facilities use Special Access not UNEs."

CLEC:

- Special Access was available long before the Telecommunications Act of 1996, but was always used as access to provide traditional long distance service. Forcing competitors that provide local service to purchase Special Access will significantly reduce the population of CLECs, if not entirely, and accomplish nothing more than to enhance the profitability of the ILECs.

- Since most high capacity facilities purchased by competitors both before and after the Telecommunications Act of 1996 served long distance customers, it is logical that most high capacity facilities are purchased as Special Access.

- Verizon's failure to use Special Access in order to serve out-of-region high capacity users is conspicuously absent from its data presentation.

- Verizon's assertion that CLECs utilize UNEs in negligible quantities is perplexing, given the tens of millions of dollars spent over the last eight years in litigation and political contributions trying to abolish them.

- Citing the business model of cable companies (the other last mile monopoly), Verizon makes the assertion that local competition can thrive on Special Access rates. Special Access was a wholesale product intended to facilitate competition for traditional long distance services, a market now dominated by Verizon.

- In one third of the time CLECs have competed in the local market, Verizon and SBC have grown to share second place as the largest long distance carriers. While Verizon and SBC have replaced MCI and Sprint as the largest long distance carriers, no CLEC has been able to replicate this success in the local market – the ILECs have retained total dominance in local market share.

- Verizon has successfully resisted the deployment of EELs in many markets, which would provide a reasonable wholesale infrastructure to competitors if properly priced. This resistance is certainly a factor contributing to the Special Access data produced by Verizon.

- Long distance competitors required Special Access in order to compete. Local exchange competitors require UNEs in order to compete. Removing high capacity loop facilities as a UNE will eviscerate local competition, not encourage it.

Verizon: "Cable company deployment of voice services has ballooned since the TRO."

CLEC:

- Verizon views the emergence of cable telephony technology, again the other last mile provider of network, as the only legitimate threat to its current dominance in the telecommunications market. Disregarding the greater degree of risk undertaken by the cable companies as compared to the incumbent local exchange carriers in the deployment of facilities, Verizon has now lobbied for "regulatory parity."

- Having enjoyed the investment protection that the cable companies did not, Verizon now seeks to level a 'playing field' that already overwhelmingly favors itself by imposing disadvantages upon the cable monopolies.

- Verizon clearly regards the markets served by cable monopolies as the final frontier of customers to conquer. Competition between two discrete monopolies, however, does not serve the public interest, secure lower prices, nor encourage the rapid deployment of new telecommunications technologies.

Verizon: "VoIP is widely available to anyone who has access to broadband service."

CLEC:

- Verizon initiated its next generation monopoly strategy by successfully lobbying the FCC to exclude competition from all fiber facilities (with the exception of soon to be obsolete voice grade bandwidth) Verizon extends to homes and businesses.

- Verizon is also the leading provider of broadband service, and its widespread deployment of fiber to the home only solidifies this market position. Verizon is well situated to provide VoIP and underprice all competitors reliant upon the Verizon loop to serve the end user.

- Verizon has entered the VoIP market, and is poised to become the largest provider of this service.

Verizon: "Wireless carriers are aggressively competing both for lines and for traffic."

CLEC:

- Verizon Wireless is the nation's largest wireless carrier. Any suggestion that the FCC should be persuaded to adopt anti-competitive regulations by Verizon's threat to allow competition among its own corporate subsidiaries should be dismissed on its face.
- Competition among Verizon Wireless and the Verizon wireline subsidiaries does not benefit consumers or businesses.

Verizon: "Carriers are continuing to compete with their own switches."

CLEC:

- The 10,000 competitive circuit switches cited by Verizon are put to use only within a regulatory environment that unbundles loops.
- The removal of high capacity loops as a UNE would incapacitate all of the switches that were installed based on a reasonable reliance that the Telecommunications Act of 1996 would at the very least permit unbundled access to last mile facilities.
- A long-term policy that initially encourages investment in facilities only to later debilitate the use of those facilities creates an insurmountable barrier to facilities deployment and market competition.

Conclusion

Verizon's anti-competitive pricing and operational practices coupled with its endless litigation and pervasive state and federal lobbying of regulatory and legislative bodies have stifled competition in most areas, leaving a concentrated population of alternative providers in a limited number of MSAs. Chairman Powell has acknowledged Verizon's approach as "the most ruthless lobbying we've ever seen," and competitors, which lack the vast resources and influence of monopolies such as Verizon, are incapable of replicating this unsavory tactic.

By all accounts, Verizon's lobbying activity has succeeded, as evidenced by its outstanding financial performance. Compared to the widespread insolvency and lack of profitability across the telecommunications industry, Verizon and its incumbent colleagues have maintained unprecedented success in their re-monopolization of the telephone business.

We advocate the adoption of rules that continue to encourage competition and benefit American consumers.